

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Dana Global Products, Inc.  
3939 Technology Drive  
Maumee, Ohio 43537

Plaintiff,

vs.

J & B Rubber Products, Inc.  
3375 North Service Road, Unit B1  
Burlington, Ontario L7N3G2  
CANADA

Defendant.

) Case No.

) Hon.

)

**COMPLAINT**

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Cary Rodman Cooper (0013062)  
Meghan Anderson Roth (0082165)

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Counsel for Plaintiff, Dana Global  
Products, Inc.

**INTRODUCTION**

1. This is a diversity action for money damages for breach of contract for goods sold and delivered and for breach of representations and warranties under the Ohio Uniform Commercial Code, Ohio Rev. Code Section 1302.85, et seq.

**PARTIES, JURISDICTION, AND VENUE**

2. The plaintiff, Dana Global Products, Inc. ("Dana"), is a Michigan corporation, and has its principle place of business at 3939 Technology Drive, Maumee,

Ohio 43537. Dana is 100% owned by Dana Limited, an Ohio LLC, and Dana Limited's sole member is Dana Holding Corporation, an Ohio corporation. The principle place of business of both Dana Limited and Dana Holding Corporation is 3939 Technology Drive, Maumee, Ohio 43537.

3. J & B Rubber Products, Inc. is an Ontario, Canada business corporation having its principle place of business at 3375 North Service Road, Unit B1, Burlington, Ontario L7N3G2.

4. The Court has jurisdiction under 28 U.S.C. § 1332. This action is between parties having diverse citizenship and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

5. Venue is proper under 28 U.S.C. § 1391(b)(2) because the contract was made and substantially administered by Dana within this District and because the parties agreed to a forum selection clause that any action to enforce or interpret the agreement is to be brought exclusively in the Northern District of Ohio or in the Lucas County, Ohio Common Pleas Court (Terms and Conditions, Attached Exhibit B, § 41, p. 11).

### **BACKGROUND**

6. On August 22, 2012, Dana submitted its blanket purchase order to J & B Rubber Products, which J & B Rubber Products accepted, and under the blanket purchase order Dana sent periodic releases for rubber products that J & B Rubber Products supplied to Dana. The contract between Dana and J & B Rubber Products is subject to the terms and conditions in the Dana Purchase Order and to the Terms and Conditions attached to the Purchase Order and found at [HTTP://supplier.dana.com/](http://supplier.dana.com/). A

copy of the Dana Purchase Order is attached as **Exhibit A**; and a copy of the Terms and Conditions is attached as **Exhibit B**.

7. J & B Rubber Products sold to Dana a rubber product referred to as an O-ring which Dana incorporated into transmission assemblies sold to its customers (motor-vehicle manufacturers), and the customers incorporated the transmission assemblies into their motor vehicles.

8. From approximately January, 2014 to May, 2014, J & B Rubber Products sold Dana defective or non-conforming O-rings, which Dana incorporated into its transmission assemblies and sold them to one of its customers who incorporated the transmission assemblies including the defective O-rings into its motor vehicles. The defective O-rings sold by J & B Rubber Products failed to seal properly causing transmission fluid to leak from the vehicles resulting in Dana's customer issuing a recall of approximately 35,000 vehicles.

9. Dana verbally notified J & B Rubber Products and had numerous discussions regarding the defective O-rings; and on May 6, 2014, Dana gave J & B Rubber Products formal, written notice of the defect and of Dana's rejection and revocation of acceptance of the defective O-rings. Dana's May 6, 2014 letter also advised J & B Rubber Products that under the Terms and Conditions Dana will look to J & B Rubber Products to indemnify and hold Dana harmless from all claims, costs, expenses, and damages due to the non-conforming O-rings. A copy of the May 6, 2014 letter is attached as **Exhibit C**.

10. J & B Rubber Products did not respond to Dana's May 6, 2014 letter.

11. After making a reasonable review and inquiry into the claims Dana settled the damage claims against it made by its customer for \$4,759,716; and the settlement

was reasonable under the facts and circumstances. Also, Dana has incurred reasonable expenses in the amount of \$242,187 resulting from the defective O-rings.

**FIRST CLAIM FOR RELIEF**

12. Dana incorporates by reference all of the allegations in paragraphs 1 - 11 above.

13. The defective O-rings supplied by J & B Rubber Products to Dana was a breach of the agreement between the parties for the following reasons:

a) The O-rings did not conform to the specifications required by the Dana Purchase Order;

b) The defective O-rings supplied by J & B Rubber Products breached the representations, warranties, and covenants in the Terms and Conditions because the O-rings were not free from defects, were not merchantable and fit for their intended purpose, and did not conform with the specifications, drawings, and performance requirements.

14. Under the Terms and Conditions, J & B Rubber Products is required to defend, indemnify, and hold harmless Dana from and against all liabilities, damages, fines, penalties, costs, claims, demands and expenses (including reasonable attorney's fees and expert's fees and expenses) arising out of, incidental to or resulting from supplier's performance of the agreement, including breach of the representations or warranties stated in the Terms and Conditions (Exhibit B, Terms and Conditions, Section 18b, at page 5).

15. Dana has complied with all of its obligations under the Dana Purchase Order and under the Terms and Conditions.

16. Dana is entitled to recover all sums described above, and Dana is also entitled to recover all amounts paid by Dana to J & B Rubber Products for the defective O-rings under the Terms and Conditions, Section 16, page 4 of attached Exhibit B.

**SECOND CLAIM FOR RELIEF**

17. Dana incorporates by reference all of the averments in paragraphs 1-16 above.

18. Because J & B Rubber Products breached the agreement and its representations and warranties as described above, Dana is entitled to recover the purchase price paid to J & B Rubber Products for the O-rings, for all damages incurred including the \$4,759,716 Dana paid to its customer for damages incurred, the \$242,187 of costs Dana incurred for internal expenses as a result of the defective O-rings, the purchase price it paid for the defective O-rings, and its attorney's fees and expenses under Ohio Revised Codes Section 1302.85, et seq.

**WHEREFORE**, Dana demands relief against defendant J & B Rubber Products, Inc. as follows:

- a) For judgment against J & B Rubber Products, Inc., as follows:
  - i) A refund of the purchase price Dana paid J & B Rubber Products for the defective O-rings;
  - ii) For damages in the amount of \$4,759,716 incurred in connection with the vehicle recall made by Dana's customer as a direct result of the defective O-rings;
  - iii) For costs and expenses incurred by Dana in the amount of \$242,187;
  - iv) For its attorney's fees and expenses incurred in this action; and

v) For all other appropriate relief.

Dated: October 6, 2014

Respectfully submitted,

/s/ Meghan Anderson Roth  
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